

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:07CR373
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
DONEY ORDORICA-SANTERO,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto set out in the Addendum to the PSR.¹ The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶¶ 49 (alleged gang affiliation) and 101 (probation officer's statement regarding departure factors). The objections refer to ¶¶ 51 and 104, as those numbers were apparently the relevant numbers in the initial version of the PSR.

¶ 49 - Alleged Gang Affiliation

The objection is tentatively denied for the reason stated by the probation officer in the Addendum and because this matter does not affect the sentencing guideline calculation.

¹The Defendant's objections were not filed with the Court as required in paragraph 6 of the Order on Sentencing Schedule. (Filing No. 21, ¶ 6.) Nevertheless, they will briefly be addressed here.

¶ 101 - *Departure Factors*

The objection to ¶ 101 is denied. The probation officer offers her assessment in ¶ 101. The officer's assessment does not affect the Defendant's ability to raise issue(s) of departure, variance or sentence reduction. However, the Court notes that no such motion has been timely filed. (Filing No. 21, ¶ 6.)

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Addendum) are denied;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 5th day of May, 2008.

BY THE COURT:

s/ Laurie Smith Camp
United States District Judge